

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BK Towers, LLC)	File Number: EB-08-KC-0272
)	
Owner of Antenna Structure)	NAL/Acct. No.: 200832560002
Manter, Kansas)	
ASR #1032514)	FRN: 0007040009

FORFEITURE ORDER

Adopted: October 16, 2008

Released: October 20, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand six hundred dollars (\$1,600) to BK Towers, LLC (“BK”), owner of antenna structure bearing registration number 1032514, Manter, Kansas (“Tower”), for willful and repeated violation of Section 17.47(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves BK’s failure to make observations of the antenna structure’s lights at least once each 24 hours, either visually or by observing an automatic indicator designed to register any failure of such lights.

II. BACKGROUND

2. On September 10, 2008, in response to a complaint of a tower light outage from the city manager of Manter, Kansas, an agent from the Commission’s Kansas City Office of the Enforcement Bureau (“Kansas City Office”) determined that the structure in question was antenna structure number 1032514, which, according to the Antenna Structure Registration database, is owned by BK. An agent from the Kansas City Office contacted BK about the complaint and a representative from BK stated that it was unaware of the outage. A BK employee was dispatched to confirm the outage by visiting the Tower site and, upon confirmation, BK filed a Notice to Airmen (“NOTAM”) report with the Federal Aviation Administration (“FAA”) late in the afternoon on September 10, 2008.

3. On September 11, 2008, an agent from the Kansas City Office interviewed one of BK’s owners, who stated that the automated monitoring system had not been operational at the Tower for one to one and a half years and that no person has been assigned or contracted to monitor the Tower lighting visually. According to the owner, BK relied on a Sheriff from Stanton County Kansas to inform it of light outages on the Tower. The agent contacted the Sheriff, who stated that he did not observe the Tower regularly and was unsure how long the lights on the Tower had been out.

4. In a series of emails between September 16 and 23, 2008, BK provided information regarding its light monitoring practices for the Tower. BK stated that BK employees visually inspected the Tower on August 6, 2008, August 30 or 31, 2008, and September 10, 2008. BK was unable to specify the

¹ 47 C.F.R. § 17.47(a).

precise date that its automatic alarm system was last operational, but it stated that its “alarm monitoring system has not been reliable and is being replaced.” BK asserted that there have been a total of only two light outages for the Tower during the past two years and those occurred on June 6, 2008 and September 10, 2008. BK stated that the June 6, 2008 outage was reported by the Stanton County Sheriff.

5. On September 30, 2008, the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* to BK in the amount of two thousand dollars (\$2,000) for the apparent willful and repeated violation of Section 17.47(a) of the Rules.² BK submitted a response to the *NAL* requesting cancellation or reduction of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining BK’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

7. Section 17.47(a) of the Rules states that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications ... shall make an observation of the antenna structure’s lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner. Although an automatic alarm system was installed at the Tower, according to BK’s owner, the system had not been operational for at least a year prior to September 10, 2008. BK also admitted that its system was not reliable and needed to be replaced. BK did not have another automatic indicator to register the failure of the Tower lights. During the year prior to September 10, 2008, BK admitted that no employees or contractors visually inspected the Tower’s lights on a daily basis. In fact, at most, BK employees made visual observations of the lighting status on only two days during the period between August 1, 2008 and September 9, 2008. It is further noted that BK was not informed of the Tower light outages on June 6 and September 10, 2008 by its employees. BK’s response to the *NAL* does not dispute any of these facts. Thus, based on the evidence before us, we find that BK willfully⁶ and repeatedly⁷ violated Section 17.47(a) of the Rules by failing to observe visually the Tower lighting at

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832560002 (Enf. Bur., Kansas City Office, September 30, 2008) (“*NAL*”).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day.

(continued....)

least once each 24 hours, at a minimum, between August 1 and September 9, 2008.

8. Nevertheless, BK requests reduction or cancellation of the proposed forfeiture, because it asserts that: 1) no actual harm occurred to any person or property; 2) BK took immediate post-inspection action to remedy the violation; and 3) BK has no prior history of violations. First, we find BK's no harm claim unpersuasive. It is well established that the absence of public harm is not considered a mitigating factor of a rule violation.⁸ It is also similarly well established that post-inspection corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁹ Although BK asserts that the forfeiture amount is excessive given its prompt post-inspection compliance efforts, the proposed forfeiture was assessed at the base forfeiture amount for failure to conduct required monitoring. Thus, we conclude that the proposed forfeiture amount is appropriate for the willful and repeated monitoring violation at issue. Finally, we have reviewed the record and reduce the forfeiture to \$1,600 based on BK's history of compliance with the Rules.

9. We have examined BK's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that a reduction of the proposed forfeiture to \$1,600 is warranted, based on BK's history of compliance with the Rules.

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, BK Towers, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand six hundred dollars (\$1,600) for violation of Section 17.47(a) of the Rules.¹⁰

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account

(...continued from previous page)

The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

⁸ See *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105 (2001); *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476 (Enf. Bur. 2003); *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893 (SED Enf. Bur. 2005); *Western Slope Communications, LLC*, Forfeiture Order, 23 FCC Rcd 8384 (WR Enf. Bur. 2008).

⁹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.47(a).

¹¹ 47 U.S.C. § 504(a).

number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. BK will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to BK Towers, LLC at its address of record and to its counsel, Dennis C. Brown, 8124 Cook Court, Suite 201, Manassas, VA. 20109-7406.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau